

Rubi, Veronica (EOIR)

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U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: (b)(6) - Tucson, AZ

Date:

In re: German BERMUDEZ-COTA

IN REMOVAL PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENT: Selma Taljanovic, Esquire

ON BEHALF OF DHS: Joey L. Caccarozzo
Assistant Chief Counsel

APPLICATION: Administrative closure; termination

The respondent has filed a timely appeal from the Immigration Judge's decision dated October 3, 2017. After the Board issued a briefing schedule, the respondent filed a motion to terminate proceedings. The Department of Homeland Security (DHS) has filed an opposition to the motion. The motion to terminate will be denied and the respondent's appeal will be dismissed.

We review the Immigration Judge's findings of fact in this matter for clear error. Questions of law, discretion, and judgment, and all other issues are reviewed de novo. See 8 C.F.R. § 1003.1(d)(3)(i), (ii).

The respondent is a native and citizen of Mexico. Based on his admissions, he arrived in the United States in April 1991 but was not admitted or paroled. The respondent was personally served with a Form I-862 notice to appear on August 28, 2013. The notice to appear ordered the respondent "to appear before an immigration judge of the United States Department of Justice . . . on a date to be set at a time to be set . . .". On September 9, 2013, the immigration court in Tucson, Arizona mailed the respondent notice of his hearing, which was scheduled for May 13, 2014, at 1:00 P.M. at 300 W. Congress, Suite 300, Tucson, AZ 85701. The respondent appeared at that hearing, as well as numerous subsequent hearings. By written pleadings, the respondent "concede[d] proper service of the notice to appear, dated August 28, 2013."

The respondent's last hearing was on October 3, 2017. At that time, he sought administrative closure (b)(5) DP

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In the alternative, the respondent sought voluntary departure. The Immigration Judge issued an oral decision

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denying a continuance and denying administrative closure. The Immigration Judge granted the respondent voluntary departure. The respondent then filed a timely appeal with the Board and subsequently filed his motion to terminate proceedings.

We first address the respondent's motion to terminate proceedings. The respondent contends that the recent decision in *Pereira v. Sessions*, 585 U.S. ___, 138 S. Ct. 2105 (2018), "mandates that proceedings in this case be terminated."

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ORDER: The motion to terminate proceedings is denied.

FURTHER ORDER: The respondent's appeal is dismissed.

FURTHER ORDER: Pursuant to the Immigration Judge's order and conditioned upon compliance with conditions set forth by the Immigration Judge and the statute, the respondent is permitted to voluntarily depart the United States, without expense to the Government, within 60 days from the date of this order or any extension beyond that time as may be granted by the Department of Homeland Security ("DHS"). *See* section 240B(b) of the Immigration and Nationality Act, 8 U.S.C. § 1229c(b); *see also* 8 C.F.R. §§ 1240.26(c), (f). In the event the respondent fails to voluntarily depart the United States, the respondent shall be removed as provided in the Immigration Judge's order.

NOTICE: If the respondent fails to voluntarily depart the United States within the time period specified, or any extensions granted by the DHS, the respondent shall be subject to a civil penalty as provided by the regulations and the statute and shall be ineligible for a period of 10 years for any further relief under section 240B and sections 240A, 245, 248, and 249 of the Act. *See* section 240B(d) of the Act.

WARNING: If the respondent files a motion to reopen or reconsider prior to the expiration of the voluntary departure period set forth above, the grant of voluntary departure is automatically terminated; the period allowed for voluntary departure is not stayed, tolled, or extended. If the grant of voluntary departure is automatically terminated upon the filing of a motion, the penalties for failure to depart under section 240B(d) of the Act shall not apply. *See* 8 C.F.R. § 1240.26(e)(1).

WARNING: If, prior to departing the United States, the respondent files any judicial challenge to this administratively final order, such as a petition for review pursuant to section 242 of the Act, 8 U.S.C. § 1252, the grant of voluntary departure is automatically terminated, and the alternate order of removal shall immediately take effect. However, if the respondent files a petition for review and then departs the United States within 30 days of such filing, the respondent will not be deemed to have departed under an order of removal if the alien provides to the DHS such evidence of his or her departure that the Immigration and Customs Enforcement Field Office Director of the DHS may require and provides evidence DHS deems sufficient that he or she has remained outside

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of the United States. The penalties for failure to depart under section 240B(d) of the Act shall not apply to an alien who files a petition for review, notwithstanding any period of time that he or she remains in the United States while the petition for review is pending. *See* 8 C.F.R. § 1240.26(i).

FOR THE BOARD